

ST 06-14

Tax Type: Sales Tax

Issue: Drive Away Decals

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

ABC SALES,

Taxpayer

A. H. Docket No. 05-ST-0000

IBT No. 0000-0000

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RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Kent R. Steinkamp, Special Assistant Attorney General, for the Illinois Department of Revenue

Synopsis:

This matter arose from a protest filed to three Notices of Assessment issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") to ABC Sales (hereinafter referred to as the "Taxpayer") in the total tax amount of \$3,172 for motorcycle sales early in February 2005. The taxpayer protested the 10-day demand letter generated from the notices and was granted a late discretionary hearing. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. On June 9, 2005, the Department issued "Notice of Assessment for Form ST-556"

Number 00000000000000 for “ST556 transaction no. 0000000000” in the amount of \$1,172 including tax, late payment penalty and interest. The notice stated that the date of the motorcycle’s delivery was February 7, 2005. (Dept. Ex. No. 1)

2. The Department issued “Notice of Assessment for Form ST-556” Number 00000000000000 for “ST556 transaction no. 0000000000” on July 12, 2005 in the amount of \$1,099 including tax, late payment penalty and interest. The notice stated the delivery date of the motorcycle was February 2, 2005. (Dept. Ex. No. 1)

3. On July 13, 2005, the Department issued “Notice of Assessment for Form ST-556” Number 00000000000000 for “ST556 transaction no. 0000000000” in the amount of \$1,241 including tax, late payment penalty and interest. The date of delivery listed on the notice was February 8, 2005. (Dept. Ex. No. 1)

4. The Department issued an Informational Bulletin in January 2005 notifying all dealers who file Form ST-556 that effective February 1, 2005, certain nonresidents may not claim the “out-of-state buyer” exemption on purchases of motor vehicles or trailers. The Informational Bulletin had a partial list of states that do not give Illinois residents an “out-of-state-buyer” exemption, including Arizona, Florida, Indiana, Massachusetts, Michigan and South Carolina. (Dept. Ex. No. 2)

5. Taxpayer’s witness admitted that it did not pay the tax on the three units at issue. (Tr. p. 16)

6. All paperwork for sales transactions done by the taxpayer is done on the day the motorcycle is transferred to the purchaser. Ownership transfers on that date as well. (Tr. pp. 16-17)

7. Taxpayer’s witness was advised it could be represented by counsel at the hearing.

It chose not to have an attorney. (Tr. p. 13)

CONCLUSIONS OF LAW:

The Illinois Retailers' Occupation Tax Act, 35 **ILCS** 120/1*et seq.* (hereinafter referred to as the "ACT"), imposes a tax on persons engaged in the business of selling at retail tangible personal property . . . (*Id.* at 120/2) Some exemptions from this tax imposition are found at section 2-5 which states "Gross receipts from proceeds from the sale of the following tangible personal property are exempt from the tax imposed by this Act:" (35 **ILCS** 120/2-5) Of relevance herein is the exemption found at subsection 25 and 25-5, which state:

(25) A motor vehicle sold in this State to a nonresident even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a driveaway decal permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code¹ or if the nonresident purchaser has vehicle registration plates to transfer to the motor upon returning to his or her home state. The issuance of the driveaway decal permit or having the out-of-state registration plates to be transferred is *prima facie* evidence that the motor vehicle will not be titled in this State. (35 **ILCS** 120/2-5(25))

(25-5) The exemption under item (25) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for a motor vehicle sold and delivered in that state to an Illinois resident but titled in Illinois. The tax collected under this Act on the sale of a motor vehicle in this State to a resident of another state that does not allow a reciprocal exemption shall be imposed at a rate equal to the state's rate of tax on taxable property in the state in which the purchaser is a resident, except that the tax shall not exceed the tax that would otherwise be imposed under this Act. At the time of the sale, the purchaser shall execute a statement, signed under penalty of perjury, of his or her intent to title the vehicle in the state in which the purchaser is a resident within 30 days after the sale and of the fact of the payment to the State of Illinois of tax in an amount equivalent to the state's rate of tax on taxable property in his or her state of residence and shall submit the statement to the appropriate tax collection agency in his or her state of residence. In addition, the retailer must retain a signed copy of the statement in his or her records. Nothing in this item shall be construed to require the

¹ 625 **ILCS** 5/3-603.

removal of the vehicle from this state following the filing of an intent to title the vehicle in the purchaser's state of residence if the purchaser titles the vehicle in his or her state of residence within 30 days after the date of sale. The tax collected under this Act in accordance with this item (25-5) shall be proportionately distributed as if the tax were collected at the 6.25% general rate imposed under this Act. (35 **ILCS** 120/2-5(25-5))

The Department issued Notices of Assessment numbered S V 0505432124099, S V 0506032106054 and S V 0506032111007 to the taxpayer for motor vehicles that the taxpayer sold. Once the Department's notices were entered into the record under the certificate of the Director (Dept. Ex. No. 1), its *prima facie* case was established, and the burden shifted to the taxpayer to overcome that *prima facie* case. 35 **ILCS** 120/4; 120/8; Anderson v. Dept. of Finance, 370 Ill. 225 (1938); Masini v. Dept. of Revenue, 60 Ill. App. 3d 11, 14 (1st Dist. 1978); Copilevitz v. Department of Revenue, 41 Ill. 2d 154, (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987)

Prior to February 1, 2005, Illinois retailers did not collect sales tax on a motor vehicle sold to an Indiana resident. A dealer would issue a temporary drive away decal permit pursuant to 35 **ILCS** 120/2-5(25). (Tr. pp. 16-17) As of February 1, 2005, the exemption no longer applied. (Tr. p. 14; Dept. Ex. No. 2)

Taxpayer protested the assessments related to motorcycle sales to Indiana residents after February 1, 2005, asserting that that the motorcycle deals were quoted for sale to those out-of-state residents before the exemption change occurred. Taxpayer asserted that the customer's banks had already approved the customers' loans for the amounts quoted to the customers. Those amounts did not include Illinois sales tax. Taxpayer also asserted that the customers paid sales tax in their own state. Based upon those assertions, the Office of Administrative Hearings granted taxpayer's request for a hearing. (Dept. Ex. No. 1)

Taxpayer's protest asserts that contracts were executed with Indiana buyers prior to the

delivery of the motorcycles in February. (Dept. Ex. No. 1) However, those contracts were not produced at hearing. A taxpayer's oral testimony, without corroborative evidence, is insufficient to rebut the Department's *prima facie* case. Once the Department establishes a *prima facie* case of correctness of amount of tax due, the burden shifts to the taxpayer to produce competent evidence, identified with books and records showing that the Department's records are incorrect. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1st Dist. 1988); Masini v. Department of Revenue, *supra*; Rentra Liquor Dealers, Inc. v. Department of Revenue, 9 Ill. App. 3d 1063 (1973)

The taxpayer produced a multi-page Exhibit 1 to support its position, that includes two documents issued to the taxpayer by the Department entitled “SOA-1 Statement of Account” “Account Summary for Sales Tax”. Several documents attached were entitled “Account Detail for Sales Tax.” Two of the account details list the three transactions at issue. On one of those account details someone has written names next to the transactions. Taxpayer Exhibits 2, 3 and 4 are Indiana registrations for three vehicles with those same three names.

Taxpayer is asserting that the transactions at issue should be exempt from the Retailers’ Occupation Tax. The well-settled law in Illinois regarding taxation exemption is that a statute granting exemption must be strictly construed in favor of taxation and against exemption. Wyndemere Retirement Community v. Department of Revenue, 274 Ill. App. 3d 445, 459 (2nd Dist. 1995) Further, the exemption claimant has the burden of proving its entitlement clearly and conclusively (*id.*) with all facts construed and debatable questions resolved in favor of taxation. (*Id.*)

The only evidence produced regarding the sales at issue were the Notices of Assessment showing delivery dates of February 2, 2005, February 7, 2005 and February 8, 2005. The dates

were based upon the ST-556 Forms that the taxpayer submitted to the Department. The taxpayer agrees that ownership occurs and transfers on the day all paperwork is done for the transactions, the same dates as listed previously. The assertions that taxpayer did not receive the informational bulletin until after February 1st, did not have enough time to convert its computer program, had to manually write ST-556s, had the manual transactions returned by the Department regarding the proper amount of tax collected, and that the Department's computer program was faulty and mis-charged on some of the manual returns (Tr. pp. 15-21), are not relevant. Taxpayers are presumed to be knowledgeable about the laws that affect them. *See First Access Material Handling v. Wish*, 297 Ill. App. 3d 396 (1st Dist.1998)

The incidence of tax is on the retailer in Illinois. *Dearborn Wholesale Grocers v. Whitler*, 82 Ill. 2d 471 (1980) The Retailers' Occupation Tax is not on the sale of tangible personal property but is on the business of selling it for use or consumption. (*Id.* at 477) The taxpayer has provided no evidence that any exemption applies to the transactions at issue. The taxpayer in this matter offered no documentation showing that the taxpayer paid the taxes due. In fact, its witness admitted that the Illinois taxes were not paid.

As taxpayer has failed to overcome the Department's *prima facie* case, I recommend that the three Notices of Assessment at issue be finalized.

Barbara S. Rowe
Administrative Law Judge
Date: August 17, 2006